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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,744	09/28/2001	Richard O. Ruhr	00163.1250US01	2979

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EXAMINER
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OGDEN JR, NECHOLUS

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 12/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/965,744

Applicant(s)

RUHR ET AL.

Examiner

Necholus Ogden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25 is/are allowed.
- 6) ☒ Claim(s) 1-24 and 26-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 14-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The aforementioned claims state a secondary alkyl sulfonate as a surfactant component. However, it appears that applicant does not have basis for said component in the specification. Appropriate clarification and/or corrections are required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-3, 7-13 and 33-34 are rejected under 35 U.S.C. 102(b) as being anticipated by WO (96/29451).

WO '451 discloses a soft metal cleaning composition comprising 1.0% of calcium acetate; 13% of homopolyacrylate; 2.50% of diphenyl disulfonate; 4.0% of amine oxide; 10% of potassium hydroxide; 20% by weight of sodium hypochlorite and the remainder water (example H).

As this reference teaches all of the instantly required it is considered anticipatory.

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8. Claims 1-3, 7-9 and 33-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Geisler et al (3,687,858).

Geisler et al disclose an aluminum cleaner comprising 1% caustic soda; 0.3% trisodium phosphate; 0.01% sodium gluconate; 0.01% polyacrylic acid; 0.04% calcium chloride (example 1).

As this reference teaches all of the instantly required it is considered anticipatory.

9. Claims 14 and 17-23 and 33-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Kanluen et al (5,710,120).

Kanluen et al disclose a non-silicated metal safe cleaning composition comprising 61.6% water; 3.5% alkyl polyglucoside; 3.05 tartaric acid; 25 parts sodium hydroxide; 2.4-dimethyl amine oxide; 1.5% lauryl sulfate and 2.0% dipropylene glycol (example 111).

As this reference teaches all of the instantly required it is considered anticipatory.

10. Claims 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Baeck et al (5,803,986).

Baeck et al disclose a liquid dishwashing composition comprising 10% linear alkyl benzene sulfonate; 0.1% of calcium ions; 0.03% protease; and 0.04% polygalacturanase (example 3-V).

As this reference teaches all of the instantly required it is considered anticipatory.

11. Claims 24 and 26-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miracle et al (5,710,116).

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12. Miracle et al disclose a beach cleaning composition which may be used to clean metal surfaces (col. 11, lines 55-57) and comprising 1.0% of calcium sulfate; 7% pyrophosphate; 5% sodium carbonate; 30% linear alkyl benzene sulfonate (see example 7) and at least one nonionic silicone surfactant (col. 24, lines 7-8).

13. Miracle et al disclose all of the instantly required except a specific teaching of each of the claimed components in an example. However, it would have been obvious to one of ordinary skill in the art to combine the components to specifically teach the claimed invention. Furthermore, it has been held that non-preferred embodiments can be indicative of obviousness. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989).

***Allowable Subject Matter***

14. Claim 25 is allowed.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholas Ogden whose telephone number is 703-308-3732. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra N. Gupta can be reached on 703-308-4708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Nicholas Ogden  
Primary Examiner  
Art Unit 1751

No  
November 29, 2003